

**OPINION
68-34**

May 24, 1968 (OPINION)

Mr. Paul A. Muehler, City Attorney

Hankinson, North Dakota

RE: Cities - Recreation System - Appropriations

This is in reply to your letter of May 22, 1968, with regard to the Summer Youth Program in your city. You inform us that for the past several years such a program has been organized by private citizens of your city. One purpose of same has been to provide recreation for the youth of your city, such as baseball and swimming. In the past the program has been financed by donations received from various organizations and private citizens, but representatives of the program have asked the City Council to help support the program through financial assistance. You request our opinion in regard to the following questions:

1. Since the Summer Youth Program is not operated or controlled by the City, can the City appropriate City funds for this project?
2. As I understand it, the City Council, without holding an election, by virtue of Chapter 40-55 of the North Dakota Century Code, can by ordinance create recreation facilities and activities. If the City Council cannot appropriate funds under Question No. 1, can it, if they create such a recreation facility under Chapter 40-55, take over the functions of the Summer Youth Program and appropriate City funds for the employment of swimming instructors, play leaders, and for equipment and like expenses?
3. If your answer to Question No. 2 is YES, can the City still appropriate such funds for such a recreation system if part of the money is used to pay a swimming instructor to give swimming lessons at lake property that is not owned or leased by the City?"

In reply to your first question, Section 185 of the North Dakota Constitution provides:

"The state, any county or city may make internal improvements and may engage in any industry, enterprise or business, not prohibited by article XX of the constitution, but neither the state nor any political subdivision thereof shall otherwise loan or give its credit or make donations to or in aid of any individual, association or corporation except for reasonable support of the poor, nor subscribe to or become the owner of capital stock in any association or corporation."

In view of this provision and noting there is no statutory authority for a city to appropriate moneys to private recreational projects, your first question must be answered in the negative.

Your second question is answered in the affirmative.

In reply to your third question, it is perhaps unusual for a city to carry out part of its functions beyond its corporate limits, also in some phases of a city's operations its jurisdiction is limited to its corporate limits or surrounding area. However, assuming that the program is basically orientated towards the city recreation program, primarily orientated to its citizens, and controlled and operated by the city, such a program would appear to be within the authorization granted by said Chapter 40-55 of the North Dakota Century Code.

You might further consider the possibility of joining with another governmental entity in these fields. (See Section 54-40-08 of the North Dakota Century Code.)

HELGI JOHANNESON

Attorney General